IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 729 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARUN ABDULLA GHANCHI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 729 of 2002

MS NITA C BANKER for Petitioner No. 1

THROUGH JAIL for Petitioner No. 1

MR SJ DAVE, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 12/03/2003

ORAL JUDGEMENT

This is an appeal under Section 374 of the Code of Criminal Procedure, 1973 (for short, "the Code") challenging the judgment and conviction order dated 04/07/02 recorded by the learned Additional Sessions

Judge (Fast Track Court) at Bhavnagar in Sessions Case No. 80 of 2000 under which the learned trial Judge convicted the present appellant for an offence punishable under Section 397 IPC and sentenced him to suffer RI for 7 years. The learned trial Judge also directed the present appellant to pay fine of Rs.250/- and in default of payment of fine, the appellant was required to undergo further SI for 15 days.

2. Feeling aggrieved by the said judgment and conviction order of the trial court, the appellant has preferred this appeal before this court. At the time of hearing, it was made clear that there is the evidence of the informant on record and the informant had identified the present appellant, at the test identification parade, before the Executive Magistrate and therefore, the appeal may be restricted to the quantum of punishment only.

3. Therefore, the appeal was accordingly admitted, only with respect to the quantum of punishment. Now, today the appeal has been argued on behalf of the appellant by Ms.N C Banker and on behalf of the State by Mr.S J Dave, learned APP. The learned advocate for the appellant has taken me through the evidence of the informant and also through the observations of the trial court, with respect to the said evidence as well as the evidence of the panch witness, in whose presence the test identification parade was conducted.

4. The learned advocate for the appellant has contended that in the present case, the muddammal weapon, knife, has not been actually used by the appellant at the time of committing the offence and therefore, the offence would not fall within the four corners of Section 397 IPC. Therefore, it was not necessary for the trial court to impose minimum sentece of 7 years. That therefore, there is scope for reduction of quantum of punishment.

5. Section 397 IPC may be reproduced for ready reference as follows;

> "Section 397 : Robbery or dacoity, with attempt to cause death or grievous hurt, - If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years."

6. On a bare reading of the aforesaid Section, it

becomes clear that at the time of committing an offence of robbery or dacoity, if the offender uses any deadly weapon, then imprisonment for the offence for which he would be punishable, shall not be less than 7 years. In the present case, we find that the informant has stated right from the beginning that at the time of committing the offence of robbery and when the appellant snatched away the portfolio from him, he had taken out knife in his hand. After that the appellant had ran away from the place. Therefore, the knife was actually taken out in the hand, by the appellant, at the relevant point of time.

7. Learned advocate for the appellant has contended that knife has not been used for the purpose of causing injury to the informant and no injury has been caused to the informant by means of the knife. In my opinion, on a bare reading of Section 397 IPC, once the knife has been shown the requirement of Section 397 IPC would be satisfied. I am also of the opinion that for the purpose of inviting a punishment under Section 397 IPC, it is not necessary that the accused causes injury, by means of a weapon.

8. It is not disputed that the appellant had a knife in his hand, at the time, when the offence was committed. The knife is certainly a deadly weapon and therefore, it has to be accepted that the appellant had used the knife at the time of committing robbery. Therefore, it is an apparent case of an offence punishable under Section 397 IPC and the said provision makes it clear that the minimum punishment awardable is Seven Years. The trial court has awarded the same minimum punishment. Therefore, there is no reason to interfere with the said sentence, imposed by the trial court. The order of the trial court is not found to be illegal and therefore, there is no merit in the present appeal and hence, it deserves to be dismissed.

9. For the foregoing reasons, this appeal is dismissed and the judgment and conviction order, recorded by the trial court are confirmed.

(D. P. Buch, J.)

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